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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

NAMESCAPE CORPORATION, an
Arizona Corporation,

Plaintiff,

vs.

THE DOT NET FACTORY, LLC, an
Ohio Limited Liability Company, dba
THE DOT NET FACTORY,

Defendants.

No.

COMPLAINT

**(Trademark Infringement; Unfair
Competition)**

For its Complaint against the above-named Defendant, Plaintiff Namescape Corporation ("Namescape") alleges as follows:

PARTIES AND JURISDICTION

1. Namescape is an Arizona corporation, with its principal place of business in Maricopa County, Arizona. Namescape's business activities include the production and sale of network account management software to companies across virtually every industry throughout the United States, and internationally.

2. Upon information and belief, Defendant The Dot Net Factory, LLC ("TDNF") is an Ohio limited liability company, with its principal place of business in Franklin County, Ohio.

1 3. Namescape seeks permanent injunctive relief, damages, and attorneys'
2 fees from TDNF's intentional misappropriation of Namescape's federally-registered
3 myPassword® name and mark. TDNF's acts constitute trademark infringement,
4 unfair competition. Namescape's claims arise out of events occurring in Arizona.

5 4. Subject matter jurisdiction exists under 15 U.S.C. § 1121, and 28 U.S.C.
6 §§1331 and 1338(a) and (b), and 28 U.S.C. § 1367(a).

7 5. Pursuant to 28 U.S.C. §1391(b) and (c), venue is proper in this District.

8 **GENERAL ALLEGATIONS**

9 6. Namescape owns the valid and subsisting federal trademark registration
10 for myPassword®, for use with computer software that controls self-service terminals
11 in the field of network account management (Registration No. 3,295,170). A copy of
12 the registration certificate is attached as Exhibit A.

13 7. Namescape's constructive date of first use for myPassword® dates back
14 to the October 5, 2005 filing date of its intent-to-use application for federal
15 registration.

16 8. Namescape began actively marketing and selling software products
17 throughout the United States under the myPassword® Mark on October 21, 2005 (the
18 "myPassword® Software"). Namescape's myPassword® Software provides a secure
19 website which allows end-users and managers to manage accounts and passwords to
20 reduce costly calls to business help desks.

21 9. Since before and after applying for and acquiring its federal trademark
22 registration, Namescape has expended significant funds in developing and marketing
23 its myPassword® Software bearing Namescape's myPassword® Mark. As a result,
24 Namescape currently enjoys strong goodwill in its myPassword® Mark throughout the
25 United States.

26 10. TDNF directly competes with Namescape throughout the United States
27 in the field of network account management software. Upon information and belief,
28 in February, 2006, TDNF launched a software package with similar functionality to

1 Namescape's myPassword[®] Software under the name "PASSWORD MANAGER"
2 (the "TDNF Software"). On April 21, 2006, more than six months after Namescape
3 applied for and began using the myPassword[®] Mark, and notwithstanding
4 Namescape's well-known and prior established rights in its myPassword[®] trademark,
5 TDNF stopped marketing the TDNF Software under the mark PASSWORD
6 MANAGER and started marketing it throughout the United States, including but not
7 limited to Arizona, under the mark "MyPassword" (the "Infringing Mark"). TDNF's
8 Infringing Mark is the same as or confusingly similar to Namescape's myPassword[®]
9 Mark, thereby directly infringing Namescape's trademark rights.

10 11. Namescape's constructive use of the myPassword[®] Mark and federal
11 trademark registration gives Namescape senior rights in this mark as compared to
12 TDNF.

13 12. In June 2006, Randy Bradley, Namescape's President, notified Patrick
14 Parker, TDNF's President, of Namescape's pending trademark application,
15 Namescape's prior use of the myPassword[®] Mark, and the likelihood of confusion
16 with consumers if TDNF continued use of the Infringing Mark. TDNF refused to
17 discontinue its use of the Infringing Mark.

18 13. On information and belief, TDNF intentionally adopted and currently
19 uses the Infringing Mark to trade on the fame and goodwill associated with
20 Namescape's myPassword[®] Mark.

21 14. On information and belief, TDNF intentionally adopted and uses the
22 Infringing Mark to cause the public to believe that Namescape is the source or origin
23 of the TDNF Software.

24 15. TDNF's use of the Infringing Mark is likely to cause consumer
25 confusion, mistake and deception.

26 16. As a direct and proximate result of TDNF's use of the Infringing Mark,
27 consumers are likely to mistake the TDNF Software and other TDNF products as
28 exclusively or jointly developed, licensed, or certified by or otherwise sponsored or

1 approved by Namescape, or incorrectly conclude that TDNF and its products are
2 somehow affiliated, connected or associated with Namescape.

3 17. As a direct and proximate result of TDNF's use of the Infringing Mark,
4 consumers have been and are likely to be misled as to the true source, sponsorship
5 and/or affiliation of TDNF's products.

6 18. On information and belief, through its use of the Infringing Mark,
7 TDNF intentionally and knowingly sought to cause such likely and actual consumer
8 confusion, mistake and deception.

9
10 **COUNT I**
(Trademark Infringement Under the Lanham Act)

11 19. Namescape realleges and incorporates herein by reference each of the
12 allegations of Paragraphs 1 through 18 above.

13 20. TDNF's use of the Infringing Mark and variants thereof to market,
14 promote and sell its TDNF Software in direct competition with Namescape's products
15 constitutes trademark infringement pursuant to 15 U.S.C. § 1114.

16 21. TDNF's infringement was committed knowingly and with intent that it
17 cause confusion, mistake or deception.

18 22. TDNF's intentional and willful infringement of Namescape's
19 myPassword® registered trademark has caused and will continue to cause damage to
20 Namescape and is causing irreparable harm to Namescape for which there is no
21 adequate remedy at law.

22 **COUNT II**
(False Designation of Origin and Unfair Competition Under the Lanham Act)

23 23. Namescape realleges and incorporates herein by reference each of the
24 allegations of Paragraphs 1 through 22 above.

25 24. TDNF's use of the Infringing Mark and variants thereof to promote,
26 market or sell its network account management software in direct competition with
27 Namescape's products constitutes unfair competition pursuant to 15 U.S.C. § 1125(a).
28

COUNT III

27. Namespace realleges and incorporates herein by reference each of the allegations of Paragraphs 1 through 26 above.

29. Namescape owns common law trademark rights in its myPassword[®] Mark.

31. TDNF's conduct is willful, deliberate and with bad intent to profit from
Namescape's trademark

1 32. TDNF's conduct has caused and will continue to cause damage to
2 Namescape in an amount to be determined at trial. TDNF's actions will continue to
3 cause irreparable harm to Namescape unless restrained by this Court.

4 **WHEREFORE**, Namescape prays for judgment against TDNF as follows:

5 A. A permanent injunction enjoining and prohibiting TDNF and/or its
6 agents, servants, employees, officers, attorneys, successors and assigns
7 from:

- 8 1. using any name or mark that contains the myPassword[®]
9 Mark or colorable imitations thereof in advertising,
10 marketing, promoting, describing, offering for sale or
11 providing any goods, services or information;
- 12 2. otherwise infringing on Namescape's registered
13 myPassword[®] Mark and other registered marks;
- 14 3. obtaining and/or maintaining any registration(s) that
15 contain myPassword[®] or any colorable imitations thereof;
- 16 4. taking any action calculated or likely to induce the belief
17 that TDNF and/or its goods or services are in any way
18 associated, connected, affiliated, licensed, or authorized
19 by Namescape;
- 20 5. using the myPassword[®] Mark or colorable imitations
21 thereof in connection with Google Adwords or any other
22 pay-per-click advertising program;
- 23 6. using the myPassword[®] Mark or colorable imitations
24 thereof as a search term to link internet users to any TDNF
25 website through any internet search engine.

26 B. Ordering TDNF to file with this court and serve on Namescape
27 within thirty days after the service of the injunction, a report in
28

1 writing, under oath, setting forth in detail the manner and form in
2 which TDNF has complied with the injunction.

- 3 C. An award of damages in favor of Namescape in an amount to be
4 determined at trial;
- 5 D. An award of treble damages as provided by 15 U.S.C. 1117(b);
- 6 E. An award of all profits received by TDNF from the sale of
7 products identified or advertised in any manner by use of the
8 Infringing Mark;
- 9 F. An award of attorney's fees and costs as provided by 15 U.S.C. §
10 1117(a) and (b);
- 11 G. An award of exemplary damages for TDNF's willful and
12 intentional acts;
- 13 H. Ordering an accounting held to determine the damages and
14 attorney's fees set forth above;
- 15 I. Any other and further relief as the Court deems appropriate and
16 equitable under the circumstances.

17
18 DATED this 12th day of February 2008.

19
20 OSBORN MALEDON, P.A.

21
22 By /s/ Jason J. Romero
23 Jonathan F. Ariano
24 Jason J. Romero
25 2929 North Central
26 Suite 2100
27 Phoenix, Arizona 85012-2794
28 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2008, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing:

/s/ Susan Whitaker

1912791

EXHIBIT A

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 3,295,170

United States Patent and Trademark Office

Registered Sep. 18, 2007

**TRADEMARK
PRINCIPAL REGISTER**

myPassword

BRADLEY, RANDALL E. (UNITED STATES INDIVIDUAL)
4815 E MOONLIGHT WAY
PARADISE VALLEY, AZ 85253

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: COMPUTER SOFTWARE FOR CONTROLLING SELF-SERVICE TERMINALS IN THE FIELD OF NETWORK ACCOUNT MANAGEMENT, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

SN 78-727,421, FILED 10-5-2005.

FIRST USE 10-21-2005; IN COMMERCE 10-21-2005.

REBECCA GAN, EXAMINING ATTORNEY